

NEBRASKA ADMINISTRATIVE CODE

Title 410 - NEBRASKA DEPARTMENT OF ROADS - RIGHT OF WAY DIVISION

Chapter 5 - Relocation Assistance

001 GENERAL

001.01 PURPOSE. The purpose of this rule is to implement the Relocation Assistance Act of 1989, in accordance with the following objectives:

001.01A To ensure that persons displaced as a direct result of publicly financed projects are treated fairly, consistently, and equitably so that such persons will not suffer disproportionate injuries as a result of projects designed for the benefit of the public as a whole; and

001.01B To ensure that Agencies implement these regulations in a manner that is efficient and cost effective.

001.02 DEFINITIONS.

001.02A AGENCY.

001.02A1 The term "Agency" shall mean any department, agency, or instrumentality of:

001.02A1a The State of Nebraska,

001.02A1b Any political subdivision of the State of Nebraska,

001.02A1c Any combination of states which includes the State of Nebraska,

001.02A1d Any combination of political subdivisions, either of the State of Nebraska alone or of the State of Nebraska and any other state or states acting in combination; and

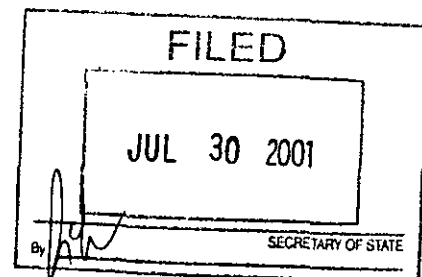
001.02A2 Any person who has the authority to acquire property by eminent domain under state law.

001.02B APPRAISAL. The term "appraisal" shall mean a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date supported by the presentation and analysis of relevant market information.

001.02C BUSINESS. The term "business" means any lawful activity, except a farm operation, that is conducted:

APPROVED
DON STENBERG
ATTORNEY GENERAL
BY *[Signature]*
Assistant Attorney General
DATE *6/18/2001*

APPROVED
2 JUL 3 0 2001
[Signature]
MIKE JOHANNIS
GOVERNOR



Title 410 - NEBRASKA DEPARTMENT OF ROADS - RIGHT OF WAY DIVISION

Chapter 5 - Relocation Assistance (Continued)

001.02C1 Primarily for the purchase, sale, lease and/or rental of personal and/or real property, and/or for the manufacture, processing, and/or marketing of products, commodities, and/or any other personal property; or

001.02C2 Primarily for the sale of services to the public; or

001.02C3 Primarily for outdoor advertising display purposes, when the display must be moved as a result of the project; or

001.02C4 By a nonprofit organization that has established its nonprofit status under applicable federal and state law.

001.02D COMPARABLE REPLACEMENT DWELLING. The term "comparable replacement" means a dwelling which is:

001.02D1 Decent, safe and sanitary as described in Section 001.02F;

001.02D2 Functionally equivalent to the displacement dwelling. The term "functionally equivalent" means that it performs the same function, provides the same utility, and is capable of contributing to a comparable style of living. While a comparable replacement dwelling need not possess every feature of the displacement dwelling, the principal features must be present. Generally, functional equivalency is an objective standard, reflecting the range of purposes for which the various physical features of a dwelling may be used. However, in determining whether a replacement dwelling is functionally equivalent to the displacement dwelling, the Agency may consider reasonable trade-offs for specific features when the replacement unit is "equal to or better than" the displacement dwelling. (See Appendix A, Section 001.02D.);

001.02D3 Adequate in size to accommodate the occupants;

001.02D4 In an area not subject to unreasonable adverse environmental conditions;

001.02D5 In a location generally not less desirable than the location of the displaced persons dwelling with respect to public utilities and commercial and public facilities, and reasonably accessible to the persons place of employment;

001.02D6 On a site that is typical in size for residential development with normal site improvements, including customary landscaping. The site need not include special improvements such as outbuildings, swimming pools, or greenhouses. (See also Section 004.03A2.);

JUL 30 2001

Title 410 - NEBRASKA DEPARTMENT OF ROADS - RIGHT OF WAY DIVISION

Chapter 5 - Relocation Assistance (Continued)

001.02D7 Currently available to the displaced person on the private market. However, a comparable replacement dwelling for a person receiving government housing assistance before displacement may reflect similar government housing assistance. (See Appendix A, Section 001.02D7.); and

001.02D8 Within the financial means of the displaced person:

001.02D8a A replacement dwelling purchased by a homeowner in occupancy at the displacement dwelling for at least 180 days prior to initiation of negotiations (180-day homeowner) is considered to be within the homeowners financial means if the homeowner will receive the full price differential as described in Section 004.01C, all increased mortgage interest costs as described in Section 004.01D and all incidental expenses as described in Section 004.01E, plus any additional amount required to be paid under Section 004.04, Replacement Housing of Last Resort.

001.02D8b A replacement dwelling rented by an eligible displaced person is considered to be within his or her financial means if, after receiving rental assistance under this rule, the persons monthly rent and estimated average monthly utility costs for the replacement dwelling do not exceed the persons base monthly rental for the displacement dwelling as described in Section 004.02B2.

001.02D8c For a displaced person who is not eligible to receive a replacement housing payment because of the persons failure to meet length-of-occupancy requirements, comparable replacement rental housing is considered to be within the persons financial means if an Agency pays that portion of the monthly housing costs of a replacement dwelling which exceeds 30 percent of such persons gross monthly household income or, if receiving a welfare assistance payment from a program that designates amounts for shelter and utilities, the total of the amounts designated for shelter and utilities. Such rental assistance must be paid under Section 004.04, Replacement Housing of Last Resort.

001.02E **CONTRIBUTE MATERIALLY.** The term "contribute materially" means that during the two taxable years prior to the taxable year in which displacement occurs, or during such other period as the Agency determines to be more equitable, a business or farm operation:

001.02E1 Had average annual gross receipts of at least \$5000; or

001.02E2 Had average annual net earnings of at least \$1000; or

1007 02 JUL

Title 410 - NEBRASKA DEPARTMENT OF ROADS - RIGHT OF WAY DIVISION

Chapter 5 - Relocation Assistance (Continued)

001.02E3 Contributed at least 33 percent of the owners or operators average annual gross income from all sources.

001.02E4 If the application of the above criteria creates an inequity or hardship in any given case, the Agency may approve the use of other criteria as determined appropriate.

001.02F DECENT, SAFE, AND SANITARY DWELLING. The term "decent, safe, and sanitary dwelling" means a dwelling which meets applicable housing and occupancy codes. However, any of the following standards which are not met by an applicable code shall apply. The dwelling shall:

001.02F1 Be structurally sound, weathertight, and in good repair.

001.02F2 Contain a safe electrical wiring system adequate for lighting and other devices.

001.02F3 Contain a heating system capable of sustaining a healthful temperature (of approximately 70 degrees) for a displaced person, except in those areas where local climatic conditions do not require such a system.

001.02F4 Be adequate in size with respect to the number of rooms and area of living space needed to accommodate the displaced person. There shall be separate, well lighted and ventilated bathroom that provides privacy to the user and contains a sink, bathtub or shower stall, and a toilet, all in good working order and properly connected to appropriate sources of water and to a sewage drainage system. In the case of a housekeeping dwelling, there shall be a kitchen area that contains a fully usable sink, properly connected to potable hot and cold water and to a sewage drainage system, and adequate space and utility service connections for a stove and refrigerator.

001.02F5 Contains unobstructed egress to safe, open space at ground level. If the replacement dwelling unit is on the second story or above, with access directly from or through a common corridor, the common corridor must have at least two means of egress.

001.02F6 For a displaced person who is handicapped, be free of any barriers which would preclude reasonable ingress, egress, or use of the dwelling by such displaced person.

001.02G DISPLACED PERSON.

001.02G1 GENERAL. The term "displaced person" means any person who moves from their real property or moves his or her personal property from the real property: (This includes a person who occupies the real property prior to its acquisition, but who does not meet the length of occupancy requirements of the Relocation Assistance Act as described in Sections 004.01A and 004.02A.):

JUL 30 2001

Title 410 - NEBRASKA DEPARTMENT OF ROADS - RIGHT OF WAY DIVISION

Chapter 5 - Relocation Assistance (Continued)

001.02G1a As a direct result of a written notice of intent to acquire, the initiation of negotiations for, or the acquisition of, such real property in whole or in part for a project.

001.02G1b As a direct result of rehabilitation, demolition, or other displacing activity, when the displacement is permanent. The phrase "other displacing activity" means only those activities that are included with regulations adopted and promulgated by the United States Department of Transportation under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, as amended.

001.02G1c As a direct result of a written notice of intent to acquire, or the acquisition, rehabilitation or demolition of, in whole or in part, other real property on which the person conducts a business or farm operation, for a project. However, eligibility for such person under this paragraph applies only for purposes of obtaining relocation assistance advisory services under Section 002.05B, and moving expenses under Sections 003.01, 003.02 or 003.03.

001.02G2 PERSONS NOT DISPLACED. The following is a nonexclusive listing of persons who do not qualify as displaced persons under this part:

001.02G2a A person who moves before the initiation of negotiations (see also Section 004.03D), unless the Agency determines that the person was displaced as a direct result of the program or project; or

001.02G2b A person who initially enters into occupancy of the property after the date of its acquisition for the project; or

001.02G2c A person who has occupied the property for the purpose of obtaining assistance under the Relocation Assistance Act;

001.02G2d A person who is not required to relocate permanently as a direct result of a project. Such determination shall be made by the Agency (see Appendix A, Section 001.02G2); or

001.02G2e An owner-occupant who moves as a result of a voluntary acquisition (see Appendix A, Section 001.02G2), or as a result of the rehabilitation or demolition of the real property. (However, the displacement of a tenant as a direct result of any acquisition, rehabilitation or demolition for a project is subject to this rule.); or

Title 410 - NEBRASKA DEPARTMENT OF ROADS - RIGHT OF WAY DIVISION

Chapter 5 - Relocation Assistance (Continued)

001.02G2f A person whom the Agency determines is not displaced as a direct result of a partial acquisition; or

001.02G2g A person who, after receiving a notice of relocation eligibility (described in Section 002.03B), is notified in writing that he or she will not be displaced for a project. Such notice shall not be issued unless the person has not moved and the Agency agrees to reimburse the person for any expenses incurred to satisfy any binding contractual relocation obligations entered into after the effective date of the notice of relocation eligibility; or

001.02G2h An owner-occupant who voluntarily conveys his or her property, as described in Appendix A, Section 001.02G2, after being informed in writing that if a mutually satisfactory agreement on terms of the conveyance cannot be reached, the Agency will not acquire the property. In such cases, however, any resulting displacement of a tenant is subject to the regulations in this rule; or

001.02G2i A person who retains the right of use and occupancy of the real property for life following its acquisition by the Agency; or

001.02G2j A person who is determined to be in unlawful occupancy prior to the initiation of negotiations (see Section 001.02U), or a person who has been evicted for cause, under applicable law, as provided for in Section 002.06.

001.02H DISPLACING AGENCY. The term "displacing agency" shall mean any Agency carrying out a publicly financed project which causes an individual to become a displaced person or any person lacking the power of eminent domain who carries out a publicly financed project when that project causes an individual to be a displaced person.

001.02I DWELLING. The term "dwelling" means the place of permanent or customary and usual residence of a person, according to local custom or law, including a single family house; a single family unit in a two-family, multi-family, or multi-purpose property; a unit of a condominium or cooperative housing project, a non-housekeeping unit; a mobile home; or any other residential unit.

001.02J FARM OPERATION. The term "farm operation" means any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operators support.

JUL 30 2007

Title 410 - NEBRASKA DEPARTMENT OF ROADS - RIGHT OF WAY DIVISION

Chapter 5 - Relocation Assistance (Continued)

001.02K INITIATION OF NEGOTIATIONS. Unless a different action is specified in applicable federal program regulations, the term "initiation of negotiations" means the following:

001.02K1 Whenever the displacement results from the acquisition of the real property by an Agency, the "initiation of negotiations" means the delivery of the initial written offer of just compensation by the Agency to the owner or the owners representative to purchase the real property for the project. However, if the Agency issues a notice of its intent to acquire the real property, and a person moves after that notice, but before delivery of the initial written purchase offer, the "initiation of negotiations" means the actual move of the person from the property.

001.02K2 Whenever the displacement is caused by rehabilitation, demolition or privately undertaken acquisition of the real property (and there is no related acquisition by an Agency), the "initiation of negotiations" means the notice to the person that he or she will be displaced by the project or, if there is no notice, the actual move of the person from the property.

001.02K3 In the case of a permanent relocation to protect the public health and welfare, under the Comprehensive Environmental Response Compensation and Liability Act of 1980 (Public Law 96-510, or "Superfund") the "initiation of negotiations" means the formal announcement of such relocation or the federal or federally-coordinated health advisory where the Federal Government later decides to conduct a permanent relocation.

001.02L LEAD AGENCY. The term "lead agency" means the Nebraska Department of Roads.

001.02M MORTGAGE. The term "mortgage" means such classes of liens as are commonly given to secure advances on, or the unpaid purchase price of real property, under the laws of the state, together with the credit instruments, if any, secured thereby.

001.02N NONPROFIT ORGANIZATION. The term "nonprofit organization" means an organization that is incorporated under the applicable laws of a state as a nonprofit organization, and exempt from paying federal income taxes under Section 501 of the Internal Revenue Code (26 U.S.C. 501).

001.02O NOTICE OF INTENT TO ACQUIRE OR NOTICE OF ELIGIBILITY FOR RELOCATION ASSISTANCE. Written notice furnished to a person to be displaced, including those to be displaced by rehabilitation or demolition activities from property acquired prior to the commitment of federal financial assistance to the activity, that establishes eligibility for relocation benefits prior to the initiation of negotiation and/or prior to the commitment of federal financial assistance.

Title 410 - NEBRASKA DEPARTMENT OF ROADS - RIGHT OF WAY DIVISION

Chapter 5 - Relocation Assistance (Continued)

001.02P. OWNER OF A DWELLING. A person is considered to have met the requirement to own a dwelling if the person purchases or holds any of the following interests in real property;

001.02P1 Fee title, a life estate, a land contract, a 99-year lease, or a lease including any options for extension with at least 50 years to run from the date of acquisition; or

001.02P2 An interest in a cooperative housing project which includes the right to occupy a dwelling; or

001.02P3 A contract to purchase any of the interests or estates described in Sections 001.02P1 and 001.02P2; or

001.02P4 Any other interest, including a partial interest, which in the judgment of the Agency warrants consideration as ownership.

001.02Q. PERSON. The term "person" shall mean any individual, partnership, corporation, or association.

001.02R. PUBLICLY FINANCED PROJECT. The term "publicly financed project" shall mean any project undertaken by an Agency in which any part of the cost is to be paid from funds derived from federal, state, or local taxes of any type, by revenue, or general obligation bonds issued by the Agency, or from funds derived by the Agency from the sale of products or services in a proprietary capacity. Publicly financed project shall not mean a project in which the federal funds involved are in the form of a federal guarantee or insurance.

001.02S. SMALL BUSINESS. A business having not more than 500 employees working at the site being acquired or displaced by a program or project, which site is the location of economic activity. Sites occupied solely by outdoor advertising signs, displays, or devices do not qualify as a business for purposes of Section 003.04. (See Appendix A, Section 001.02S.)

001.02T. TENANT. The term "tenant" means a person who has the temporary use and occupancy of real property owned by another.

001.02U. UNLAWFUL OCCUPANCY. A person is considered to be in unlawful occupancy if the person has been ordered to move by a court of competent jurisdiction prior to the initiation of negotiations or is determined by the Agency to be a squatter who is occupying the real property without the permission of the owner and otherwise has no legal right to occupy the property under state law. A displacing Agency may, at its discretion, consider such a squatter to be in lawful occupancy.

JUL 30 2007

Title 410 - NEBRASKA DEPARTMENT OF ROADS - RIGHT OF WAY DIVISION

Chapter 5 - Relocation Assistance (Continued)

001.02V UTILITY COSTS. The term "utility costs" means expenses for heat, lights, water and sewer.

001.03 NO DUPLICATION OF PAYMENTS. No person shall receive any payment under this rule if that person receives a payment under federal, state, or local law which is determined by the Agency to have the same purpose and effect as such payment under this rule. (See Appendix A, Section 001.03.)

001.04 MANNER OF NOTICES. Each notice which the Agency is required to provide to a property owner or occupant, shall be personally served or sent by certified or registered first-class mail, return receipt requested, and documented in the Agency files. Each notice shall be written in plain, understandable language. Persons who are unable to read and understand the notice must be provided with appropriate translation and counseling. Each notice shall indicate the name and telephone number of a person who may be contacted for answers to questions or other needed help.

001.05 APPEALS.

001.05A GENERAL.

001.05A1 SCOPE AND APPLICATION. These rules shall govern practice and procedure in all hearings involving contested cases as that term is defined in 84-901(3) Neb.Rev.Stat. Practice and procedure for hearings involving any Agency shall also be governed by Chapter 84, Article 9 Neb.Rev.Stat. in the absence of a specific rule, practice pertaining to proceedings in the district courts of this state shall be applicable.

001.05A2 ACTIONS WHICH MAY BE APPEALED. Any aggrieved person may file a written appeal with the Agency in any case in which the person believes that the Agency has failed to properly consider the persons eligibility for, or the amount of a relocation payment required under these rules.

001.05A3 FILINGS. All correspondence and filings shall be addressed or delivered to the head of the Agency.

001.05A4 TIME LIMIT FOR INITIATING APPEAL. Appeals must be filed with the Agency within 60 days of the displaced persons receipt of written notification of the Agency's determination on the displaced persons claim.

001.05A5 TIME COMPUTATION. In computing any period of time prescribed or allowed by these rules the day of the act or event after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday,

Title 410 - NEBRASKA DEPARTMENT OF ROADS - RIGHT OF WAY DIVISION

Chapter 5 - Relocation Assistance (Continued)

Sunday or a legal holiday, in which event, the period runs until the end of the next day which is neither a Saturday, Sunday nor a holiday. When the period of time prescribed or allowed is less than five days, intermediate Saturdays, Sundays and holidays shall be excluded in the computation. When the federal government (Post Office) and the Agency observe the same holiday on different days, and such prevents a party from acting within the prescribed time, both days observed shall be considered as holidays.

001.05A6 RIGHT TO REPRESENTATION. A person may be represented by legal counsel or other representative in connection with his or her appeal, but solely at the persons own expense.

001.05A7 DEFINITIONS. As used in these rules of practice and procedure, the following definitions shall apply unless the context, to be intelligible or prevent absurdity, otherwise requires:

001.05A7a PLEADINGS DEFINED: Pleadings shall mean any written application, petition, protest, complaint, answer or motion used in any proceedings pursuant to this rule.

001.05A7b AGENCY DEFINED: Agency shall mean the entity providing relocation assistance, or as provided in Section 001.02A.

001.05A7c FILED WITH THE AGENCY DEFINED. The filing of pleadings with the Agency as required by these rules shall be made by filing them with the Agency head. If mailed to the Agency, the date of receipt at the Agency and not the date of deposit in the mail, is determinative.

001.05A7d HOLIDAY DEFINED: A holiday is a day or any portion of a day designated by statute or authorized by the Governor in which no business is transacted by the Agency.

001.05A7e OFFICE HOURS DEFINED: Office hours will be the normal business hours of the Agency involved with the appeal.

001.05A7f HEARING DEFINED: All hearings shall be informal hearings conducted by a Hearing Examiner who is an employee of the Agency. The record of each hearing shall be transcribed or recorded, by the Agency at which either party may elect to be bound by the rules of evidence applicable in the district courts, if such election is in accordance with the requirements of 84-914 Neb.Rev.Stat.

001.05A7g PARTY DEFINED: Party shall mean the Agency (see Section 001.05A7b) or the displaced person. (See Section 001.02G.)

JUL 30 2001

Title 410 - NEBRASKA DEPARTMENT OF ROADS - RIGHT OF WAY DIVISION

Chapter 5 - Relocation Assistance (Continued)

001.05B HEARING EXAMINER.

001.05B1 APPOINTMENT OF HEARING EXAMINER. Upon receipt of a request for a hearing by a party, the Agency head shall appoint a Hearing Examiner or Hearing Examiners to administer, conduct and preside over all hearings. The Hearing Examiner may be the Agency head, an individual or individuals who is/are employed by the Agency, or any other authorized designee, provided, the individual(s) so appointed can, in the opinion of the Agency head, serve as Hearing Examiner(s) in a competent and efficient manner. The Hearing Examiner(s) shall not have been directly involved in the action appealed.

001.05B2 DUTIES OF HEARING EXAMINER.

001.05B2a CONDUCT OF HEARING. The Hearing Examiner shall preside at the hearing, open the proceedings, acknowledge appearance of parties and counsel, receive evidence for the record, rule on all motions and objections, may interrogate witnesses, and shall close the proceedings. If a party or parties are not represented by legal counsel, the Hearing Examiner shall explain to them the rules of practice and procedure and shall conduct the hearing generally in a less formal manner.

001.05B3 CUSTODIAN OF ALL PLEADINGS. Upon appointment as Hearing Examiner, the Hearing Examiner shall become the custodian of all pleadings, exhibits, documents, and briefs entered, filed and introduced into evidence by the parties. Discovery documents, including depositions, need not be filed with the Hearing Examiner unless ordered by the Hearing Examiner or when introduced into evidence.

001.05B4 LIMITATION OF POWERS. A Hearing Examiner shall have no power to take any action involving a final determination of the proceedings.

001.05B5 RECORD OF PROCEEDINGS.

001.05B5a RECORD. The Hearing Examiner shall prepare an official record which shall include testimony and exhibits, however, it shall not be necessary to transcribe shorthand notes or recordings unless requested by either party, in which event the costs of such transcription shall be borne by whomever makes such request.

001.05B5b NOTICE OF HEARING. It shall be the duty of the Hearing Examiner to determine that notice of hearing has been given in accordance with these rules.

1065 85 101

Title 410 - NEBRASKA DEPARTMENT OF ROADS - RIGHT OF WAY DIVISION

Chapter 5 - Relocation Assistance (Continued)

001.05B5c OATH. All testimony presented before the Hearing Examiner shall be given under oath which the Hearing Examiner will have the authority to administer.

001.05B5d CONDUCT OF PARTIES. The Hearing Examiner shall have the power to exclude or remove from the hearing any person who engages in improper conduct.

001.05B5e FINDINGS AND RECOMMENDATIONS. The Hearing Examiner shall, in writing, make complete findings of fact and conclusions of law together with a recommendation for disposition of the issue to the Agency head.

001.05C COMMENCEMENT OF PROCEEDING. A hearing shall be scheduled upon receipt of a written appeal.

001.05D SCHEDULING OF HEARING. A hearing shall be held no sooner than ten days after receipt of a written request, unless agreed upon in writing by the parties.

001.05E LOCATION OF HEARING. In setting the time and place for hearings in contested cases, appropriate consideration shall be made for the convenience and necessity of all of the parties, which includes the Agency or its representative.

001.05F NOTICE OF HEARING. The Agency head shall give reasonable notice of hearing stating the date, time, location and general subject matter of the hearing. Notice shall be given by certified mail no later than five days prior to a hearing. Failure of a party to appear at a scheduled hearing shall be grounds for dismissal of the proceeding.

001.05G MOTIONS.

001.05G1 Motions made prior to a hearing shall be in writing and a copy thereof shall be served on the parties. Such motions, except motions constituting final disposition of a proceeding, shall be ruled on by the Hearing Examiner. Motions constituting final disposition of a proceeding shall be ruled upon by the Agency head.

001.05G2 Motions may be ruled on ex parte, without argument. A copy of the motion with the ruling thereon shall be mailed to the parties.

001.05G3 MOTION FOR CONTINUANCE. Motions for continuance shall be granted at the discretion of the Hearing Examiner, however, no continuance shall be requested and none allowed but for good cause shown and in no case shall a hearing be continued for a period of more than twenty days.

JUL 30 2001

Title 410 - NEBRASKA DEPARTMENT OF ROADS - RIGHT OF WAY DIVISION

Chapter 5 - Relocation Assistance (Continued)

001.05H DISCOVERY.

001.05H1 The party shall have the right to request answers to questions, and to request the production of specified documents relevant to the proceedings. The Agency shall permit a party to inspect and copy all materials pertinent to the appeal, except materials which are classified as confidential by the Agency. The Agency may, however, impose reasonable conditions on the persons right to inspect, consistent with applicable laws. Further, each may take depositions of any witness, upon ten working days notice to the other.

001.05H2 Discovery requests and/or notice shall be addressed to the party from whom the information or documents are sought.

001.05H3 Answers and documents must be provided within ten working days of receipt of request. Objections to such requests shall be made to the Hearing Examiner within five days of receipt of the request. The Hearing Examiner shall affirm or deny such objection within five days of receipt thereof and shall establish time limits for response when objections are denied.

001.05H4 Failure to respond to any discovery request, except where objections to such requests are sustained, may, at the discretion of the Hearing Examiner, result in the nonresponding party being denied the right to introduce any evidence on the subject of the request, or such other remedy as deemed appropriate.

001.05H5 The time limits of the discovery procedure may, if necessary and justified in the opinion of the Hearing Examiner, be adjusted to accommodate the time required by the circumstances.

001.05I SUBPOENA. A subpoena may be had upon request which shall indicate to the Hearing Examiner the names and the last known addresses of the witnesses to be called. If evidence other than oral testimony is required, each item to be produced shall be adequately described. All requests for subpoena shall be directed to the attention of the Hearing Examiner no less than seven days prior to the published date of said hearing. The Hearing Examiner shall issue subpoena as requested and mail the same to the party so requesting within five days of receipt of request therefor. Service may be made either by mailing a copy thereof by registered or certified mail, return receipt requested, no less than three days before the hearing date of the cause which the witness is required to attend, or personally by any person not interested in the action. No costs for serving a subpoena will be allowed.

Title 410 - NEBRASKA DEPARTMENT OF ROADS - RIGHT OF WAY DIVISION

Chapter 5 - Relocation Assistance (Continued)

001.05J CONDUCT OF HEARING. The Agency shall present its case first, setting forth the grounds and reasons for its actions, and then the other party shall be heard. In cases where the Agency feels that the other party should be heard first, that party shall be notified not less than five days in advance of the hearing.

001.05K DECISION OF THE AGENCY HEAD. The decision of the Agency head shall be in writing and a copy of the decision shall be mailed to the party by certified or registered mail no later than thirty days after the recommendation of the Hearing Examiner is received by the Agency head. The Agency head may, at his discretion, adopt the recommendation of the Hearing Examiner, or he may make an independent decision accompanied by his findings of fact and conclusions of law. If the full relief requested is not granted, the Agency shall advise the person of his or her right to seek judicial review.

001.06 RECORDS.

001.06A RECORDS. The Agency shall maintain adequate records of its acquisition and displacement activities in sufficient detail to demonstrate compliance with this part. These records shall be retained for at least three years after each person displaced from the property receives the final payment to which he or she is entitled under this rule.

001.06B CONFIDENTIALITY OF RECORDS. Records maintained by an Agency in accordance with this part are confidential regarding their use as public information, unless applicable law provides otherwise.

ANNOTATION

Title 410
Chapter 5
Section 001

Enabling Legislation
76-1214 through 76-1242
Neb. Rev. Stat.